

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1526 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DIPAKBHAI FATESINHRAO

BRAHMBHATT

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR KT DAVE, AGP for Respondent No. 1 to 3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/05/2000

ORAL JUDGEMENT

#. District Magistrate, Baroda, passed an order on June 7, 1999, detaining present petitioner-Dipakbhai Fatesingrao Brahmbhatt, under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short). The order was passed by the detaining authority with a view to preventing the detenu from black marketing essential commodities like high speed diesel and from acting in any manner prejudicial to the maintenance of

supply of commodity, i.e. high speed diesel, which is essential to the community.

#. The facts of the case are that the detenu was found to be indulged in activities which are detrimental to smooth supply of essential commodities like high speed diesel. There is a petrol pump being run on National Highway No. 8 in the outskirts of village Jambuva, district Baroda, in the name of Jalaram Petroleum. The licensee is one Kalyansinh Gopalsinh Raulji of Deroli, district Baroda. The petitioner-detenu was the Manager of the said petrol pump. An inspection was carried out by a team of Civil Supplies Department on February 8, 1999 and certain samples were taken. The samples were sent to the laboratory and it was found that there was different density of diesel which was not in conformity with the required standards. There were certain irregularities also which were noticed through the inspection. Therefore, the impugned order came to be passed on June 7, 1999, wherein it has been stated in paragraph 7 that the detenu has committed breach of certain provisions of the Motor Spirit and High Speed Diesel (Prevention of Malpractices in Supply and Distribution) Order, 1990 and, therefore, he is required to be detained.

#. The detenu has challenged the order of detention on various grounds. However, Mr. Prajapati has pressed into service the only ground of delay in considering the representation by the Central Government. He has placed reliance on the affidavit-in-reply filed on behalf of the Union of India. He submitted that the representation made on behalf of the detenu was received by the Central Government on March 13, 2000. The said representation was in Gujarati and, therefore, the Central Government called for English version of the said representation vide letter dated March 21, 2000. Mr. Prajapati submitted that the Central Government took 7 days in calling for Gujarati version of the representation. This delay has not been explained in the affidavit-in-reply. Therefore, the right of the detenu of making an effective representation is adversely affected so also the continued detention.

#. Ms. Dawavala, learned Standing Counsel appearing for the Union of India, respondent no.4 has opposed this petition. She submitted that 4 holidays intervened between 13th March, 2000 and 21st March, 2000 and, therefore, there is no delay. The petition may, therefore, be dismissed.

#. Mr. K.T. Dave, learned AGP has opposed this petition on behalf of respondent nos. 1 to 3 and has relied upon the affidavit-in-reply filed on behalf of the State Government and the detaining authority.

#. Having regard to rival side contentions, it is clear from the affidavit-in-reply filed on behalf of the Union of India that the representation made in favour of the detainee was received in Gujarati by the Central Government on March 13, 2000 and English version thereof was called for by letter dated March 21, 2000 i.e. after 8 days. There is no explanation given in the affidavit-in-reply filed on behalf of the Union of India. However, the learned Standing Counsel, appearing for the Union of India tried to explain the delay by stating that March 17 and 20, 2000 were holidays for the Central Government. March 18, 2000 was Saturday and March 19, 2000 was Sunday and therefore, the offices of the Central Government were closed from March 17, 2000 to March 20, 2000 and therefore, immediately on reopening after 4 holidays, letter was written calling for English version of the representation from the State Government. Even if the explanation tendered by the learned Standing Counsel is accepted then also, there is total inaction on the part of the Central Government for 13th, 14th, 15th and 16th March, 2000 i.e. 4 days. Nothing more was required to be done than calling for English version of the representation as the representation was in Gujarati language and as such, lapse of 4 days in calling for such English version indicates that the representation was attended to in a routine manner. This delay of 4 days can certainly be said to have affected the right of the detainee of making an effective representation guaranteed under Article 22 (5) of the Constitution. The continued detention, therefore, would be rendered bad in law. The petition, therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated June 7, 1999 is hereby quashed and set aside. The detainee - Dipakbhai Fatesinhrao Brahmabhatt, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-